In the High Court of Judicature at Madras

Dated : 21.11.2007

Coram

The Honourable Mr.Justice V. DHANAPALAN

W.P.No.15480 of 2007 & M.P.No.1 of 2007

Chiranjeevi Wind Energy Ltd.,
rep. By its Chairman and
Managing Director Mr.R.V.S.Mari Muthu,
26, Kamaraj Road
Mahalingapuram, Pollachi 642 002. Petitioner

Vs.

Centre for Wind Energy Technology
Velacherry-Tambaram High Road
Pallikaranai, Chennai 601 302 Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the relief of issuance of writ of certiorarified mandamus to call for the records of the respondent in No.C-WET/S&C/TAPS/CWEL/2006-2 dated 15.12.2006 Centre for Wind Energy Technology, Chennai to include the petitioner's name in the revised list of Models and Manufacturers of Wind Electric Generators/Wind Turbines Equipment issued quarterly.

For petitioner Mr.B.Kumar, Senior Counsel
for M/s.R.Loganathan

For respondent Mr.T.R.Ravikumar

ORDER

This writ petition has been filed for a certiorarified mandamus challenging the proceedings of the respondent herein dated 15.12.2006 in and by which the petitioner has been invited to pay particular attention to sections IIB and III which are serious issues and require review of documentation and repetition of verification of safety and function tests and asking the petitioner to arrange to send the clarifications/information at the earliest and for consequential direction to include the petitioner's name in the revised list of Models and Manufacturers of Wind Electric Generators/Wind Turbines Equipment issued quarterly.

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2. The petitioner's case, as culled out from its affidavit, is as under:

a. The petitioner is a company engaged in the manufacture of wind energy equipments popularly known as Wind Mills, having its factory at Pondicherry, which includes manufacture, erection and commission and later maintenance of such wind mills or power generators. The ISO 9001:2 certificate issued to the petitioner is being renewed from time to time and it is subsisting as on date which assures quality management system practice of the Company. The petitioner had a sister Company under the name "Arul Mariamman Textiles Ltd., Wind Energy Textiles Ltd., (AMTL) which was importing complete equipment for a wind mill from "Wind World", a company registered and functioning in Denmark. The equipments were imported on CKD basis (knocked down condition) and the petitioner has expertise in the field. However, Wind World, Denmark became bankrupt and its equipments were auctioned by the liquidator in Denmark and the petitioner took large amount of such components in the auction and imported them into India and those components were also being used in the manufacturing of the wind mill. The petitioner thereafter developed sources for getting the components in India itself which could not be profitably manufactured in its own factory at Coimbatore and Pondicherry. One of the components of the wind turbines is gear box. It gets rotated taking energy by the rotation of the blades of the wind mills which are attached to the gear box. The petitioner company was also sourcing the gear box from one Shanthi Gears, a very leading manufacture of gear box of various types which is also an ISO certified company and leading exporter of gear box to foreign countries including Germany.

b. While so, the respondent has a system of publishing list of manufacturers of wind electric generators/wind turbines, in which the petitioner company has always been shown as one of the manufacturers of wind electric generators/wind turbines manufacturers in India. The list of manufacturers contained the name of the petitioner in the category of 250 KW manufactures. The Centre for Wind Energy Technology (hereinafter referred to as "C-WET") who is the respondent issues Type Certificates for wind turbines of 250 KW . This certificate had been granted after due evaluation of performance of wind turbines/ wind mills manufactured by the petitioner and the same is valid from 29.12.2005 to 30.9.2006. Accordingly, the petitioner's name had been so included uninterruptedly for the last several years. The conformity evaluation in S.No.PTC 1-010 dated 4.1.06 contains the following clause :

> "The conformity evaluation was carried out according to TAPS -2000 – Provisional Typed Certification Scheme for WT in India. The WT typed is specified on page 2 of this certificate. Changes in the wind turbine design or the manufacturer's quality system are to be approved by C-WET. If any changes are

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carried out without approval, the certificate loses its validity."

Thus, the certificate would continue to be followed so long as there is no change in the wind turbine designed or manufactured quality system and if there is a change or deviation, then it has to be carried out with the approval of respondent. The equipment was further approved by the respondent. While that being the position, the respondent issued the order dated 15.12.2006 stating as though there was a deviation in the component make of the gear box and it is for this reason the provision certificate was not renewed.

c. The petitioner is astonished by this conclusion of the respondent. The Design Data information provided pertain to the gear box and all the eight items mentioned therein were duly certified and says that they are perfectly in order and accepted by the respondent under the impugned order itself. However, in the later paragraphs of the order, it says that the provisional type certificate certifying the gear box as manufactured by Wind World. This gear box equipment now used is not manufactured by Wind World and therefore, it amounts to deviation in the gear box and hence it cannot be accepted.

d. the above reasoning in the order is palpably wrong since the turbines manufactured contain various components. The gear box is one of them. This gear box which is from Shanthi Gears has been found to be proper in every sense and it is so certified by the respondnet itself. Hence, the mere change in the manufacturer of gear box would not constitute a deviation within the meaning of provisional type certificate. The petitioner has the right to manufacture the Wind World Equipment in India as it has the permission to manufacture such turbine of 250 KW. This permission to manufacture dated 24.9.2004 is also enclosed. Therefore, the gears manufactured by Shanthi Gears must be considered as if it is manufactured by Wind World, as it has been manufactured with the same technology, drawings and methodology. When the wind energy equipment manufactured by the petitioner satisfies every requirement and accepted in the market, without justification, the petitioner's name has been removed from the list of manufacturers published by the respondent on 2.1.2007. The petitioner's representation dated 8.1.2007 was of no avail.

e. The non-inclusion of the petitioner's name has serious consequence, which is akin to blacklisting a manufacturer. The purchasers of wind electric generators/wind mills will normally go by the C-WET list of manufacturers. Besides, banks have verified before releasing loans for purchase of wind mills whether the petitioner is listed by C-WET. Further, the nodal agency like Electricity Boards often insist upon that the equipment is supplied by manufacturers listed by C-WET. Customs Department would grant duty concession for import of certain components only if C-WET lists the manufacturer and therefore, since the petitioner is not included in the manufacturing list, gravest prejudice is caused to

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the petitioner and the action of the respondent is arbitrary and violative of Article 14 and it affects the livelihood of more than 300 workers and three times their numbers, who work through such sub-contracts and therefore, the impugned order of the respondent has to be quashed.

3. The respondent has filed a counter affidavit contending that:

a. the writ petition itself is not maintainable as there is no impugned order passed by the respondent which requires to be quashed; but it is only a letter seeking clarification based on the spot inspection done by the respondent and therefore, the writ petition filed is premature and liable to be dismissed in limine on this sole ground.

b. since the Certification Scheme is issued by the Ministry of New and Renewable Energy, an appeal is to be provided to the Secretary to the Government of India as per TAPS 2000 (amended) clause 2.5.4 and the petitioner has not exhausted the alternative remedy available to him.

c. further as per the agreement for Review/Verification of Documentation for compliance with TAPS-2000 under Category-I entered between writ petitioner and C-WET, there is an Arbitration clause for settlement of disputes which is to be referred to the Sole Arbitrator; the Government of India, gives a special focus on the promotion of power through renewable energy sources such as wind, solar, biomass and such others; due to the importance of the promotion of renewable energy in a focused manner, the respondent has a separate Ministry viz., Ministry of New and Renewable Energy earlier known as Ministry of Non-conventional Energy Sources MNES now known as MNRE; the Government of India is offering several promotional incentives such as 80% accelerated depreciation on the investment, concessional customs duty on import of selected components etc. and these incentives are being used by the industry; the Ministry is issuing guidelines to ensure the healthy and orderly growth of wind power sector and has established Centre for Wind Energy Technology (C-WET) as an autonomous institution of Government of India, at Chennai, Tamil Nadu and Standards & Certification (S&C) unit is one of the five units of C-WET; S & C unit takes up the provisional type Certification of wind turbines, as per Type Approval - Provisional Scheme (TAPS 2000 -amended), the type certification scheme for wind turbines in India, the Provisional Type Certification (PTC) of wind turbines can be taken up according to the following three categories.

Category -1 PTC for wind turbine already possessing type certificate or approval.

Category - 2 PTC for wind turbine already possessing type certificate or approval, with minor modifications/changes, including provisional type testing/ measurements at the test site of C-WET/ Field.

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Category - 3 PTC for new or significantly modified wind turbine including provisional type testing/measurements at the test site of C-WET/field.

d. the Revised List of Models and Manufactures of Wind Electric Generators Wind Turbine Equipment is being used by C-WET under the directives of Ministry; the requirements are stated in the guidelines issued by MNRE and they have to be satisfied for inclusion of any company / wind turbine model in the list; the Self-Certification facility is extended by the Ministry with conditions stipulated in their various guidelines; the wind turbines under self-certification are also included in the said list; the Ministry reviews the documentation provided by the manufacturers based on the guidelines issued by the Ministry; The review procedure is stringent and no deviation is permitted, taking into account the larger interests of the various stake holders of the industry and also in the public interest. The guidelines and Lists issued by C-WET are widely accepted by the industry and various bodies including financial institutions, State Electricity Boards/ State Nodal Agencies prior to issue of No Objection Certificates etc.

e. further any change in the major components including change in the make/vendor of the component shall have to be taken up with the certificate body for evaluation and compliance as per the certification scheme in vogue; if the changes including change of make/vendor for the major components are made by the wind turbine manufacturer, without their evaluation and acceptance of the certification body, then the provisional type certificate loses its validity; it is because the manufacturing system evaluation forms an integral part of the type certification process; in line with this, as per TAPS-2000 (amended), it is stated that the allowable alternate components shall be defined and stated in the provisional type certificate; hence, if any changes in major components including make /vendor are to be made, then the same shall have to be approved and included in the PTC; this procedure is followed by all the certification bodies, internationally; various well known international certification bodies viz., M/s. Det Norske Veritas A/s (DNV), Denmark, M/s.RISO National Laboratory, Denmark and M/s. Germanischer Lloyd Wind Energies GmbH, Germany have sent letters in this regard confirming the same approach and uniform policy.

f. the allegation of the petitioner that the proceedings dated 15.12.2006 is the impugned order is not correct as it is only a letter seeking information/ clarifications based on the spot inspection. In addition to change of gearbox make, the petitioner has not revealed the use of auctioned components for their production and thereby misled C-WET; further, it was not informed about the use of any factory at Coimbatore earlier thereby

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preventing C-WET from verification of quality management system and the petitioner has not also informed C-WET about sourcing the gearbox from M/s.Shanthi Gears also.

g. M/s. RISO National Laboratory, Denmark, the International Certification body, who has initially issued the Type Certificate for the said wind turbine model, had informed C-WET vide their letter dated 24.11.2005 that if the manufacturer wants to use a new gearbox, the gear box also has to be evaluated and included in the Type Certificate; that is because the manufacturing evaluation is part of the type certificate also. . . If he sells turbines referring to a valid type certificate and uses false components, the certifying body must withdraw the certificate and the manufacturer can be punished.

h. therefore, C-WET has taken up the Provisional type Certification of the said wind turbine model, under Category-I, based on the Type Certificate for Wind World W 2920/250 KW wind turbine model, issued by M/s. RISO National Laboratory,Denmark (hereinafter referred to as RISO); according to RISO, the Type Certificate is not valid, if the manufacturer uses a new component, which is not included in the Type Certificate; the type Certificate issued by RISO for Wind World W 2920/250 KW wind turbine model is not valid, since the petitioner has used a new gearbox, which is not certified; based on this, the Provisional type Certificate issued by C-WET is also not valid for the said wind turbine model and hence, the statement of the petitioner in the petition that mere change in the manufacturer of gearbox would not constitute a deviation within the meaning of the type certificate is not correct; the allowable alternate components shall be defined and stated in the provisional type certificate; accordingly, C-WET has issued the Provisional Type Certificate for the said wind turbine model, in which the specifications of the wind turbine are given, where only Wind World gearbox make was included and not M/s.Shanthi Gears make.

i. the permission was extended to M/s.AMTL or its associates M/s.Chiranjeevi Wind Energy Limited for a further period of three years from 10.10.2004 to 30.9.2007 to manufacture and market 250 KW Wind World wind turbines in India; in the letter, the permission to manufacture Wind World gearbox is not included for obvious reasons detailed above and hence, the petitioner can manufacture the wind turbines with certified components only and in this case, the Wind World make gearbox was only certified and hence, the petitioner has to use only Wind World make gearbox; the assumption of the petitioner that the gears manufactured by M/s.Shanthi Gears must be considered as if it is manufactured by Wind World is not correct; in addition, the petitioner itself has stated in its letter dated 02.01.2007 that it had already initiated necessary steps for the preparation of documents related to the gearbox and other components of their wind turbine and sought time for the submission of the documents for their review; the Wind turbine model did not meet all the requirements of the guidelines issued by the Ministry and hence, the name of the petitioner with the said wind turbine

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model was not included in the list; C-WET had informed the deviation in the gearbox found during the spot inspection vide its letter dated 18.9.2006; subsequently, the petitioner's representatives had visited C-WET on 31.10.2006 and during the meeting, it was explained in detail that use of M/s.Shanthi Gears make gearboxes cannot be accepted without approval of the certification body; however, the petitioner had sent a letter dated 11.11.2006 stating that there was no deviation in the gearbox; C-WET again reiterated that the change of gearbox make cannot be accepted vide its impugned proceedings dated 15.12.2006; even then, the petitioner stated in its letter dated 02.01.2007 that it had initiated necessary steps for the preparation of documentation and sought some time for submission of the documents for review; and

j. in these circumstances, the wind turbine model was not included in the list, due to the reasons that the petitioner had not satisfied the requirements of the guidelines and it is not blacklisting as alleged by the petitioner and if the petitioner satisfies the requirements of the guidelines, then its name would be included in the list in future; thus, C-WET has not acted in an arbitrary manner; the licence given to the petitioner for manufacture and market ends on 30.9.2007 and therefore, it would have to get fresh licence and if the petitioner wants to include a new supplier for gearbox, viz. M/s. Shanthi Gears, then the petitioner has to obtain the licence which includes the design rights of the wind turbine also; subsequently, the petitioner can apply for certification of the said wind turbine model to any international certification body, recognised by C-WET, or C-WET itself as per the certification in vogue; the petitioner's name can be included in the list, after obtaining the type certificate and meeting the requirements of the guidelines; therefore, the writ petition is premature and the same is not maintainable as the petitioner has not availed the alternative remedy and without exhausting the same, the petitioner has moved this Court and the same cannot be maintained and the petition has to be dismissed.

7. Mr. B. Kumar, learned Senior Counsel for the petitioner, at the outset, has assailed the impugned order dated 15.12.2006 as it is against the parameters of the respondent. He has submitted that the design data information relating to the gear box was duly certified and it is perfectly in order and accepted by the respondent and therefore, the stand of the respondent that the gear box equipment now used is not manufactured by Wind World and this amounts to deviation in the gear box, cannot be accepted as the reasoning is palpably wrong as the turbines manufactured contain various components and gear box is one of them and this gear box which is from Shanthi Gears has been found to be proper in every sense and it is certified by the respondent itself and therefore, the change in the manufacturer of gear box would not constitute a deviation within the meaning of provisional type certificate and in the absence of any deviation, the petitioner has to be considered for inclusion in the list of manufacturer for the wind turbine model to any international certification body recognised by the respondent.

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8. Secondly, the learned Senior Counsel appearing for the petitioner has contended that when the provisional type certified gear box manufactured by Wind World, Denmark is accepted and equally, the gear box which is from Shanthi Gears has been found to be proper in every sense and which is so certified by the respondent also can be accepted, a mere change in the manufacturer of the gear box would not constitute a deviation within the meaning of provisional type certificate.

9. Thirdly, he has contended that any change in the major component has to be taken up with the certification body for evaluation and compliance as per the certificate scheme in vogue and when there are changes including change of make/vendor for the major components made by the wind turbine manufacturer and the evaluation is made as per the scheme which is an integral part of type certification process, it cannot lose its validity whereas the respondent has communicated that as the changes are communicated without approval, the certificate loses its validity.

10. He has further contended that the respondent has no power to revise the guidelines for wind power project as the respondent would undertake evaluation of the wind turbines set up under self-certification by following the procedure as given in para 3 below and send recommendations to the Ministry to consider the continuation of models entitlement for self-certification facility and however, if the evaluation is defective, it must be sent to the Ministry and they have to encourage establishment of wind mill in the larger interest of the country as a whole; in respect of evaluation of the certificate, the respondent has also addressed to a German company with regard to the question regarding indigenization of various component / sub assemblies that go to make up a wind turbine and if the manufacturer wishes to develop a new vendor for a certain component, whether he has to come back to the certification agency for evaluation once again and if he does not, whether the certificate loses its validity. The German company also has replied to the respondent stating that the manufacturer does have to come back to the certification body for evaluation if he wishes to develop a new vendor for a certain component or sub-assembly and also it is right that the certificate loses its validity if the manufacturer does not come back to the certification body in such a case. But, in this regard, there is no notice to the petitioner about the loss of validity of the evaluation certificate and these are all only communication and correspondence and these do not have any statutory value and therefore, the power of the respondent to revise the guidelines and taking certain non-statutory things under consideration with regard to the validity of the evaluation no way affects the inclusion of the petitioner's name in the list.

11. Finally, the learned Senior Counsel appearing for the petitioner has contended that the petitioner has an effective and efficacious remedy before this Court as the petitioner has made out a strong case and it is within the jurisdiction and discretion of this Court to grant the the relief under Article 226 of the Constitution of India.

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12. In support of his contention on the aspect of alternative remedy, the learned counsel for the petitioner has placed reliance on a decision of the Supreme Court reported in JT 2005 (6) SC 298 in the case of State of H.P. and others vs. Gujarat Ambuja Cement Limited & another: (para 10)

> "We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

13. With regard to the question as to whether the executive or the departmental instruction has the statutory force, reliance has been placed by the learned counsel for the petitioner in the judgment of the Supreme Court reported in AIR 1987 SC 478(1) in the case of Bijoe Emmanuel and others vs. State of Kerala and others and the relevant paragraph reads as under:

> "15. We have referred to Art. 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty, integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. The law is now well settled that any law which may be made under Cls.(2) to (6) of Art.19 to regulate the exercise of the right to the freedoms guaranteed by Art.19(1)(a) to (e) and (g) must be "a law" having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P., AIR 1963 SC 1295, the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said,

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> "Though learned counsel for the respondent started by attempting such a justification by invoking S.12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chap.XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant Cls.(2) to (6) of Art.19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art.19(1), nor would the same be "a procedure established by law" within Art. 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which eh seeks, to restrain the State from taking action under the regulations."

14. On the other hand, the learned counsel for the respondent has raised a preliminary objection on the maintainability of the writ petition as there is no impugned order passed to be quashed as alleged by the petitioner since it is only a letter seeking clarification based on the spot inspection done by the respondent. Therefore, the writ petition is premature and liable to be dismissed in limine on this ground.

15. Secondly, the learned counsel has contended that since a certificate scheme is issued by the MNRE, an appeal is to be provided to the Secretary to the Government of India as per the TAPS 2000 (amended) clause 2.5.4 which is annexed in the typedset of papers and the writ petitioner has not exhausted the alternative remedy available to it.

16. Thirdly, he has contended that as per the agreement for Review/Verification of documentation for compliance with TAPS – 2000 under Category – I entered into between the petitioner and the respondent, there is an Arbitration clause for settlement of disputes which is to be referred to the sole arbitrator and therefore, the petitioner, instead of invoking the Arbitration clause, has hastened to approach this Court by way of this writ petition and as such, the writ petition is not maintainable.

17. The learned counsel for the respondent, in his last limb of contention, has argued that the Government of India gives a special focus on the promotion of power through renewable energy sources such as wind, solar, bio-mass and such others and it is offering special promotional incentives such as 80% accelerated depreciation on the investment, concessional customs duty on import of selected components, etc. and these incentives are being used by the industry. MNRE has been

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issuing guidelines to ensure the healthy and orderly growth of wind power sector. Provisional type certificate of wind turbine possessing type certificate or approval is a requirement if it is with minor modifications or changes including provisional type testing/measurements at the test site of the respondent field. The respondent was not informed about the use of any factory at Coimbatore by the petitioner earlier thereby preventing the respondent from verification of quality management system and the petitioner has not also informed the respondent about sourcing the gearbox from Shanthi Gears. Therefore, when the approval of the certification body is a major deviation as the gear box is one of the load carrying components related to safety, change of suppliers/make of the component, without the approval of the certification body is certainly a major deviation. Unless the petitioner provides the required documentation including design calculations of a gearbox as defined in TAPS 2000 to carry out a detailed review by the respondent, the approval cannot be provided. Hence, the change of gear box make without the approval of the certification body could not be accepted by the respondent. Therefore, the above said communication has been sent to the petitioner and the same can be properly satisfied by the petitioner in order to include its name in the list.

18. I have given due consideration to the submissions made by the learned counsel on either side and also the rules position and decisions relied on by them besides perusing all the material documents filed in support of the respective parties.

19. It is seen that the petitioner is a company engaged in the manufacture of wind energy equipments popularly known as Wind Mills and it has a factory at Pondicherry. Its activities include manufacture, erection and commission and later maintenance of such wind mills or power generators. It has got ISO 9001:2 certificate which is renewed from time to time. It had a sister concern called "Arul Mariamman Textiles Ltd., Wind Energy Textiles Ltd. (AMTL)" which was importing complete equipment for a wind mill from Wind Mill, a Denmark company. The equipments were imported on "knocked down condition" basis and the petitioner has experience in the field. Due to the bankruptcy of Wind World, Denmark, its equipments were auctioned by the liquidator in Denmark and the petitioner took large amount of such components in the auction and imported them to India and the same have been used in the manufacture of Wind Mill. Besides these components, the petitioner has also developed sources for getting components in India itself. One of the components of the wind turbines is gear box. The petitioner company was sourcing gear box from one Shanthi Gears, one of the manufacturers of gear boxes of various types which is also an ISO certified company and a leading exporter of gear box to foreign countries including Germany. Further, the respondent has consistently published a list of manufacturers of Wind Energy generators/Wind Turbines in which the petitioner has been included as one of the manufacturers of Wind Energy generators/Wind Turbine manufacturers in India under the category of 250 KW manufacturers. The respondent is the authority to issue type certificate of wind turbines of 250KW. After the evaluation of performance, the provisional type certificate has been issued to the petitioner valid from 29.12.2005 to 30.09.2006 and accordingly, the

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petitioner's name has been included in the list for the above period. In the conformity evaluation certificate in C. No.PTC I-010 dated 04.01.2006, it is stated that the conformity evaluation was carried out according to TAPS 2000 Provisional Type Certification Scheme for wind turbines in India. The wind turbine type is specified in page 2 of this certificate. Changes in the wind turbine design or the manufacturer's quality system are to be approved by the respondent. If any changes are carried out without approval, the Certificate loses its validity. This certificate has been in existence. So long as the change in the wind turbine design or manufacturer's quality system and if there is a change or deviation, then it has to be carried out with the approval of the respondent.

20. While that being the position, the respondent issued the impugned order dated 15.12.2006 which reads as follows:

> "This has reference to our letter dated 18-9-2006 regarding the Provisional Type Certificate (PTC-010), issued by C-WET, for CWEL C2920/250 KW wind turbine model and the verification of safety and function test and spot check carried out by C-WET on C2920/250 KW wind turbine at Munduvelampatti village site. We have received the clarifications vide our letter dated 18.09.2006. Upon review of the clarifications, the comments have been prepared and enclosed as annexure.
>
> Please pay particular attention to sections II B and III which are serious issues and may require review of documentation and repetition of verification of safety and function tests. Kindly arrange to send the clarifications/information/ at the earliest."

21. Along with the above communication, certificate design data information has been asked to be provided and certain deviation has been pointed out with regard to comparison design data which has to be checked by the petitioner. Deviation in component make has been pointed out along with verification of safety and function tests. In respect of deviation, it is pointed out by the respondent as under:

> "During spot inspection, it was found that the gear box supplied by Shanthi Gears Ltd has been fitted in the wind turbine. However, as per the Provisional Type Certificate, the gear box manufacturer Wind World make has been included. As already communicated in the meeting held on 31.10.2006, the gear box manufacturing/assembly process is a sophisticated engineering process. As you are already aware that the gear box is one of the major critical component in the wind turbine. Based on the above, we would like to inform you that the deviations in the gearbox make cannot be accepted."

22. From an analysis of the impugned communication which has been challenged by the petitioner, it is seen that the respondent has pointed the deviation in respect of review and documentation and repetition of

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verification of safety and function tests and has asked the petitioner to send the clarification/information at the earliest, particularly in respect of deviation in component make and verification of safety and function test. In respect of verification of safety and function test as indicated, the petitioner has satisfied the safety and other function test and indicated that the test needs to be conducted again. Therefore, the petitioner has been asked to arrange for necessary clarification and information in this regard.

23. It is not in dispute that the TAPS-2000 Provisional Type Certificate certifying the components manufactured by the petitioner has been evaluated and the certificate was given for the period from 29.12.2005 to 30.09.2006. It has been specifically indicated in that order that changes in the wind turbine design or the manufacturer's quality system are to be approved by the respondent and if any changes are carried out without approval, the certificate loses its validity. Therefore, the petitioner, while sourcing the gear box from Shanthi Gears at Coimbatore should have got the approval and in this regard, certain things have been pointed out and on satisfaction of that, the respondent has indicated that the wind turbine model was not included in the list due to the reason that the petitioner had not satisfied the requirement of the guidelines and that the petitioner has not been blacklisted as alleged by the petitioner. If the requirement of the guidelines is satisfied, then, the petitioner's name would be included in the respondent's list in future. The components which have been used by the petitioner imported from Denmark were originally used in the wind turbine for which certificate has been granted. Now, the petitioner, in order to follow indigenisation, has gone to source gear box from Shanthi Gears at Coimbatore. If this gear box is as per requirements and the guidelines, the respondent has indicated that it is ready to consider the petitioner's case on satisfaction of all the deviations, safety and function tests. Therefore, the respondent has not rejected the petitioner's case and the impugned communication is only an intimation to the petitioner to satisfy the requirement on satisfaction of which the respondent is ready to consider the petitioner's case and it has been communicated to the petitioner that that its licence for manufacturing of components and market ends on 30.09.2007 and thereafter, it would have to get a fresh licence and if the petitioner wants to include a new supplier for gear box, viz., Shanthi Gears, then it has to obtain licence which includes design rights of the wind turbine also and thereafter, the petitioner can apply for certification of the said wind turbine model to any international certification body, recognised by C-WET or C-WET itself as per the certification in vogue and thereafter, the petitioner's name can be included in the list. In the absence of any rejection order passed by the respondent, the petitioner need not have any apprehension that inclusion of the petitioner's name in the list will be stopped or will not be renewed.

24. On the other hand, the petitioner can also go to the MNRE which is the appellate authority over the decision made by the respondent according to the basis of approval given in TAPS under clause 2.5.4. Instead, the petitioner has come before this Court seeking to set aside the impugned communication dated 15.12.2006 which has in no way rejected the petitioner's case for inclusion in its list nor has

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blacklisted petitioner in its list. Therefore, on the facts and circumstances of the case, the petitioner's case has to be considered in the light of various factors and one such factor is the components received from Wind World, Denmark which have been used earlier and now, the petitioner is sourcing from an indigenous company which also should be taken note of, provided the gear box manufactured by Shanthi Gears is in conformity with the design and other requirements as per the TAPS 2000 scheme. Then, the respondent may certainly accept the petitioner's case and include its name in its list. This can be done by approaching the appellate authority as per the provision indicated. Instead of exhausting the effective alternative remedy seeking its relief which is within the jurisdiction and discretion of the appellate authority who can very well go into the issue involved in this case and can set right the grievance of the petitioner and without availing the same, the petitioner has approached this Court under Article 226 of the Constitution of India.

25. With regard to the contention of the respondent that any dispute between the parties has to be referred to the Sole Arbitration, I am of the view that this issue does not at all arise for consideration since there is no dispute with regard to the terms of the agreement.

26. Further, the aspects of executive instruction, policy decision and revised guidelines as communicated in the impugned order are also matters for consideration by the appellate authority and in the absence of any prejudice greatly affecting the petitioner's interest at this stage, the petitioner cannot be said to have been aggrieved by the revised guidelines unless it is shown that the revised guidelines are not within the competency of the respondent. Being an authority under the Ministry of Government of India, it is only the guidelines which would indicate certain schemes in the interest of the safety and function tests. Therefore, having found that the respondent has come out with a statement in the counter that it is willing to consider the petitioner's case if there is satisfaction of the required norms, I am of the considered view that the petitioner need not apprehend that the relevant guidelines will affect its interest.

27. In the facts and circumstances of the case and bearing in mind that the use of gear box by the petitioner from an indigenous manufacturer would only pave way for the growth of the domestic industry which would, in turn and automatically, lead to development of the Indian economy as a whole, I am of the considered opinion that the order passed by the respondent which is challenged in this petition is merely a communication to the petitioner in which the petitioner's case has not at all been rejected and as such, it is needless to go into the correctness or otherwise of the same. In such view of the matter, it would be only better if the petitioner approaches the Ministry under the Government of India which is the competent authority to deal with the issue involved in this petition. Accordingly, the petitioner is directed to exhaust the appeal remedy by approaching the Ministry under the Government of India which is the appellate authority, by narrating the circumstances, especially the need to source the gear box indigenously from Shanthi Gears, taking note of the safety and function tests, within a period of two weeks from the date of receipt of a copy

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of this order and on thus being approached by the petitioner, the appellate authority shall consider the petitioner's case in accordance with law and on merits, giving due credence to the petitioner's explanation and also the discussion made above and pass appropriate orders within a period of four weeks.

In fine, the writ petition is disposed of accordingly. No costs. Consequently, connected M.P. is closed.

krr/cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

Centre for Wind Energy Technology
Velacherry-Tambaram High Road
Pallikaranai, Chennai - 601 302

+1 cc to Mr.R.Loganathan, Advocate Sr.No.68917.

+1 cc to Mr.T.Ravi Kumar, Advocate Sr.No.68908.

SKV(CO)
dcp/22.11

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